

FILED

JUL 16 2009

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY W. H. DEPUTY

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

DAVID JAMES STRICKLAND,

Plaintiff,

VS.

EVERETT VAN HOESEN,

Defendant.

No. CIV-09-502-W

ORDER

On June 22, 2009, United States Magistrate Judge Robert E. Bacharach issued a Report and Recommendation in this matter and recommended that the Court revoke the pauper status previously granted plaintiff David James Strickland and order Strickland to pay the filing fee in the amount of \$350.00. Strickland was advised of his right to object to the Report and Recommendation, but he has not done so within the allotted time.¹

At the time Strickland, proceeding pro se, filed his complaint against defendant Everett Van Hoesen on May 13, 2009, Strickland was housed at the Kay County Jail. Strickland identified Van Hoesen as the Sheriff of Kay County, and he alleged in his complaint, that his constitutional right to be free from cruel and unusual punishment had been violated because during his incarceration, he had been denied proper medical and mental health care and sanitary living conditions. Strickland sought relief against Van Hoesen under title 42, section 1983 of the United States Code.

¹The United States Postal Service returned to the Clerk of the Court the copy of the Report and Recommendation mailed to Strickland. The envelope bore the handwritten notation: "NOT HERE."

In reviewing Strickland's Motion for Leave to Proceed in Forma Pauperis and in light of Strickland's incarceration, Magistrate Judge Bacharach on May 15, 2009, found that Strickland was then without sufficient funds and that he was entitled to proceed without prepayment of the filing fee. Magistrate Judge Bacharach's Order Granting Leave to Proceed In Forma Pauperis [Doc. 5] was returned to the Clerk of the Court by the United States Postal Service.² The envelope bore the handwritten notations "not here" and "RTS."

On May 26, 2009, Magistrate Judge Bacharach issued an Order directing Strickland to supplement his Motion for Leave to Proceed in Forma Pauperis. Magistrate Judge Bacharach wrote:

"Mail to . . . [the Kay County Jail] has been returned, and Mr. Strickland's whereabouts are unknown to the Court. . . .

"Because Mr. Strickland was incarcerated when the action began, the Court allowed him to proceed in forma pauperis. Pursuant to the Prison Litigation Reform Act, 28 U.S.C. § 1915(b)(2), the Court also directed withdrawal of funds on a monthly basis to satisfy the remainder of the filing fee. However, the Court has no way of knowing whether . . . [Mr. Strickland] remains incarcerated or is still unable to pay the remaining filing fee.

"The Court has a responsibility to ensure that . . . [Mr. Strickland] remains qualified for pauper status, and the apparent release or move may have affected his ability to pay the \$350.00 filing fee. Accordingly, by June 15, 2009, . . . [Mr. Strickland] shall file an undated form motion for leave to proceed in forma pauperis . . . [and] shall provide updated information regarding . . . [his] financial condition, including any employment, assets or monies obtained since his release from the Kay County Jail."

Order to Supplement at 1-2 (May 26, 2009)(footnote and emphasis deleted) [Doc. 10].

²On May 15, 2009, Magistrate Judge Bacharach also issued an Order directing Strickland to clarify whether he was suing Van Hoesen in his individual capacity, in his official capacity as Sheriff of Kay County or in both capacities. The copy of this Order mailed to Strickland was likewise returned to the Clerk of the Court by the United States Postal Service. The envelope bore the handwritten notations "not here" and "RTS."

Magistrate Judge Bacharach also warned Strickland that his

"failure to timely comply with t[his] order may result in revocation of pauper status and/or involuntary dismissal of any remaining claims."

Id. at 2.

The copy of the Order to Supplement issued by Magistrate Judge Bacharach on May 26, 2009, and mailed to Strickland was likewise returned to the Clerk by the United States Postal Service. The envelope again bore the handwritten notation "NOT HERE."

Upon review of the record, the Court concurs with Magistrate Judge Bacharach's finding that Strickland's failure to provide supplemental financial information prevents a proper assessment of Strickland's right to proceed in forma pauper and his suggestion that the Court revoke Strickland's pauper status and order him to pay the filing fee in its entirety.

Accordingly, the Court

(1) ADOPTS Magistrate Judge Bacharach's Report and Recommendation [Doc. 13] issued on June 22, 2009;

(2) hereby REVOKES Strickland's pauper status effective this date;

(3) ORDERS Strickland

(a) to pay the filing fee in the amount of \$350.00;

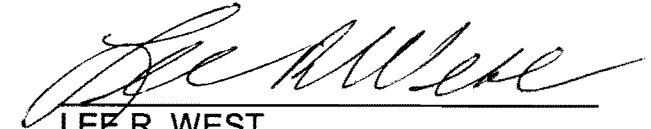
(b) to request an extension of time to do so; or

(c) to supplement the record with information about his financial condition within twenty (20) days of the date of this Order;

(4) CAUTIONS Strickland that his failure to timely comply with this Order will result in dismissal without prejudice of his claims against defendant Van Hoesen; and

(5) DIRECTS the Clerk of the Court to mail a copy of this Order to Strickland at his last known address.³

ENTERED this 16th day of July, 2009.


LEE R. WEST
UNITED STATES DISTRICT JUDGE

³In each instance, the Clerk of the Court mailed Magistrate Judge Bacharach's Orders to the address listed by Strickland in his complaint. Rule 5.4(a), Rules of the United States District Court for the Western District of Oklahoma, provides that "[p]apers sent by the Court will be deemed delivered if sent to the last known address given to the Court."

Rule 5.4(a) requires pro se litigants to provide the Court with a mailing address, and it further requires pro se litigants to file with the Clerk notice of any change of address. Strickland has failed to comply with this rule.